

1 MCGREGOR W. SCOTT
United States Attorney
2 JUSTIN J. GILIO
Assistant United States Attorney
3 2500 Tulare Street, Suite 4401
Fresno, CA 93721
4 Telephone: (559) 497-4000
Facsimile: (559) 497-4099
5

6 Attorneys for Plaintiff
United States of America
7

8
9 IN THE UNITED STATES DISTRICT COURT
10 EASTERN DISTRICT OF CALIFORNIA

11 UNITED STATES OF AMERICA,
12 Plaintiff,
13 v.
14 MICHAEL ERIN VANDEVENTER,
15 Defendant.
16

CASE NO. 1:20-CR-00206-DAD-BAM

STIPULATION REGARDING EXCLUDABLE
TIME PERIODS UNDER SPEEDY TRIAL ACT;
AND ORDER

DATE: January 27, 2021
TIME: 1:00 p.m.
COURT: Hon. Barbara A. McAuliffe

17 This case is set for a status conference on January 27, 2021. On April 17, 2020, this Court issued
18 General Order 617, which suspended all jury trials in the Eastern District of California scheduled to
19 commence before June 15, 2020, and allowed district judges to continue all criminal matters to a date
20 after June 1. Subsequent general order, including most recently General Order 628, similarly were
21 entered to address public health concerns related to COVID-19.

22 Although the General Orders address the district-wide health concern, the Supreme Court has
23 emphasized that the Speedy Trial Act's end-of-justice provision "counteract[s] substantive
24 openendedness with procedural strictness," "demand[ing] on-the-record findings" in a particular case.
25 *Zedner v. United States*, 547 U.S. 489, 509 (2006). "[W]ithout on-the-record findings, there can be no
26 exclusion under" § 3161(h)(7)(A). *Id.* at 507. Moreover, any such failure cannot be harmless. *Id.* at
27 509; *see also United States v. Ramirez-Cortez*, 213 F.3d 1149, 1153 (9th Cir. 2000) (explaining that a
28 judge ordering an ends-of-justice continuance must set forth explicit findings on the record "either orally

1 or in writing”).

2 Based on the plain text of the Speedy Trial Act—which *Zedner* emphasizes as both mandatory
3 and inexcusable—General Orders 611, 612, and 617 require specific supplementation. Ends-of-justice
4 continuances are excludable only if “the judge granted such continuance on the basis of his findings that
5 the ends of justice served by taking such action outweigh the best interest of the public and the
6 defendant in a speedy trial.” 18 U.S.C. § 3161(h)(7)(A). Moreover, no such period is excludable unless
7 “the court sets forth, in the record of the case, either orally or in writing, its reason or finding that the
8 ends of justice served by the granting of such continuance outweigh the best interests of the public and
9 the defendant in a speedy trial.” *Id.*

10 The General Orders exclude delay in the “ends of justice.” 18 U.S.C. § 3161(h)(7) (Local Code
11 T4). Although the Speedy Trial Act does not directly address continuances stemming from pandemics,
12 natural disasters, or other emergencies, this Court has discretion to order a continuance in such
13 circumstances. For example, the Ninth Circuit affirmed a two-week ends-of-justice continuance
14 following Mt. St. Helens’ eruption. *Furlow v. United States*, 644 F.2d 764 (9th Cir. 1981). The court
15 recognized that the eruption made it impossible for the trial to proceed. *Id.* at 767-68; *see also United*
16 *States v. Correa*, 182 F. Supp. 326, 329 (S.D.N.Y. 2001) (citing *Furlow* to exclude time following the
17 September 11, 2001 terrorist attacks and the resultant public emergency). The coronavirus is posing a
18 similar, albeit more enduring, barrier to the prompt proceedings mandated by the statutory rules.

19 In light of the societal context created by the foregoing, this Court should consider the following
20 case-specific facts in finding excludable delay appropriate in this particular case under the ends-of-
21 justice exception, § 3161(h)(7) (Local Code T4).¹ If continued, this Court should designate a new date
22 for the status conference. *United States v. Lewis*, 611 F.3d 1172, 1176 (9th Cir. 2010) (noting any
23 pretrial continuance must be “specifically limited in time”).

24 STIPULATION

25 Plaintiff United States of America, by and through its counsel of record, and defendant, by and
26 through defendant’s counsel of record, hereby stipulate as follows:

27 ¹ The parties note that General Order 612 acknowledges that a district judge may make
28 “additional findings to support the exclusion” at the judge’s discretion. General Order 612, ¶ 5 (E.D.
Cal. March 18, 2020).

1 1. By previous order, this matter was set for status on January 27, 2021.

2 2. By this stipulation, defendant now moves to continue the status conference until May 26,
3 2021, and to exclude time between January 27, 2021, and May 26, 2021, under Local Code T4.

4 3. The parties agree and stipulate, and request that the Court find the following:

5 a) The government has represented that the discovery associated with this case
6 includes investigative reports, lab reports, social media account search returns, cell phone
7 extractions, cell phone location data, and other items. The discovery in the case is voluminous.
8 All of this discovery has been either produced directly to counsel and/or made available for
9 inspection and copying.

10 b) Counsel for defendant desires additional time for discovery review, settlement
11 exploration, and case preparation. Counsel for defendant believes that failure to grant the above-
12 requested continuance would deny him/her the reasonable time necessary for effective
13 preparation, taking into account the exercise of due diligence.

14 c) The government does not object to the continuance.

15 d) Based on the above-stated findings, the ends of justice served by continuing the
16 case as requested outweigh the interest of the public and the defendant in a trial within the
17 original date prescribed by the Speedy Trial Act.

18 e) For the purpose of computing time under the Speedy Trial Act, 18 U.S.C. § 3161,
19 et seq., within which trial must commence, the time period of January 27, 2021 to May 26, 2021,
20 inclusive, is deemed excludable pursuant to 18 U.S.C. § 3161(h)(7)(A), B(iv) [Local Code T4]
21 because it results from a continuance granted by the Court at defendant's request on the basis of
22 the Court's finding that the ends of justice served by taking such action outweigh the best interest
23 of the public and the defendant in a speedy trial.

24 4. Nothing in this stipulation and order shall preclude a finding that other provisions of the
25 Speedy Trial Act dictate that additional time periods are excludable from the period within which a trial
26 must commence.

27 IT IS SO STIPULATED.
28

1 Dated: January 12, 2021

2 MCGREGOR W. SCOTT
3 United States Attorney

4 /s/ JUSTIN J. GILIO
5 JUSTIN J. GILIO
6 Assistant United States Attorney

7 Dated: January 12, 2021

8 /s/ Richard Oberto
9 Richard Oberto
10 Counsel for Defendant
11 Michael Erin Vandeventer

12 **ORDER**

13 IT IS SO ORDERED that the status conference is continued from January 27, 2021, to **May 26,**
14 **2021, at 1:00 p.m. before Magistrate Judge Barbara A. McAuliffe.** Time is excluded pursuant to 18
15 U.S.C. § 3161(h)(7)(A), B(iv).

16 IT IS SO ORDERED.

17 Dated: **January 13, 2021**

18 */s/ Barbara A. McAuliffe*
19 UNITED STATES MAGISTRATE JUDGE
20
21
22
23
24
25
26
27
28